BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)

PRE-WORKSHOP COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES SUBMITTED IN ADVANCE OF THE JUNE 21-23RD WORKSHOPS ON THE INTERIM PERFORMANCE STANDARD

I. INTRODUCTION

In response to the June 1, 2006 scoping memo as well as the May 31st memo from the Commission's Division of Strategic Planning (DSP), the Division of Ratepayer Advocates (DRA) offers the following comments prior to the upcoming June 21 through 23rd workshops on an interim performance standard for electric power procured by utilities and possibly other non-utility load serving entities (LSE's) as well.

II. COMMENTS

To the extent it has formulated a position in advance of the workshop based on available information, DRA's responses to DSP's May 31st questions, follow.

QUESTION 1

Should the Commission adopt an interim Electric Portfolio Standard (EPS) to guide ongoing electric procurement decisions while it takes the necessary steps to fully implement D.06-02-032? Why or why not? Address the following in your response:

a. What are the likely costs and benefits of imposing a performance standard on LSEs and their customers?

b. Would failure to adopt a performance standard create unwise incentives to some LSEs and customers to "lock in" higher emission resources before an anticipated cap-and-trade system is imposed?

c. How sharply do EPS costs and benefits vary with the type of performance standard imposed? With different assumptions about the future cost of carbon compliance?

d. How do the performance standard and cap proposed by the CPUC interact with proposed state legislation in this area? How might potential legislation affect CPUC action in this proceeding?

e. How would an interim EPS interact with the LSEs' other responsibilities under the Commissions procurement orders?

f. If the main purpose of the EPS is to forestall "backsliding" pending adoption of a load-side cap, are there other policies that could have the same effect in a more direct or simpler fashion?

Yes. Establishing an interim EPS as quickly as is feasible is necessary for the standard to be effective in setting the foundation for meeting the GHG emissions reduction goals that have been proposed by the Climate Action Team Report. While it is not, at this time, knowable what the costs of imposing this EPS on LSE's will be, DRA believes that delays in setting the interim EPS may very well encourage LSE's to "lock in" higher carbon emissions resources and thereby contribute to a potential "back sliding" pending the expected (later) adoption of a load-based cap. DRA is unaware of other mechanisms or means by which such events (locking-in and back-sliding) can be effectively avoided.

DRA believes that matters associated with sub-question (d) will be the most significant matter that will shape the answer(s) to this general question. In particular, SB 1368 (Perata) could entail some modification or clarification to the details for computing the EPS; as of this date SB1389 has passed the Senate and has been sent to the Assembly. A second piece of legislation, AB 32 (Nunez) might also affect key aspects of what the Commission can do as it moves forward with an EPS and load-based cap and trade

mechanism. Final adoption of these bills may not come until the end of this legislative session (September, 2006).

It would be a mistake, however, for the Commission to wait until the contents and fate of this legislative are known before proceeding to seek a reasonable solution to the questions associated with the details of what, exactly, the interim EPS should be, or to which parties, exactly, it applies. To facilitate a common awareness of the current contents and status of these bills for the upcoming workshops, DRA recommends that parties review is the legislative history and status of SB 1368 and AB 32 prior to the workshop.

DRA supports the Commission's intent to require all LSEs to provide information associated with their "inventory" of GHG emissions, relative to an EPS. Developing this information will be necessary to enable the Commission to come to a reasonable conclusion regarding most of the answers to the more detailed questions provided in the DSP "guidance" memo of May 31:

QUESTION 2

If an interim EPS is adopted, to which LSEs should it apply? Why or why not? [1] Address the following in your response:

a. Should the standard apply solely to IOUs, or should it apply to all non-municipal LSEs within the Commission's jurisdiction (including ESPs and CCAs)?

b. Should the CPUC implement an EPS for LSEs within its jurisdiction while leaving the possible inclusion of public power entities to the Legislature? Would this result in major undesirable impacts on competitive markets, power flows, or system reliability and if so, how might those impacts be mitigated?

[1] Discussion on this topic during pre-workshop comments and at the workshop will focus on policy issues, not legal issues. As discussed at the PHC, there will be a separate opportunity for briefs on Commission jurisdiction with respect to the adoption of an interim performance standard to non-IOU LSEs.

To be most effective, the EPS should, in theory, apply to all LSEs. Given current jurisdictional questions regarding public power entities, however, the Commission must wait for further legislative direction regarding the jurisdictional matters involving public power entities (i.e., the municipal utilities). Regarding compliance by non-utility jurisdictional LSEs (e.g., Energy Service Providers (ESPs) and Community Choice Aggregators (CCAs) raise issues to similar to ones that arise in the context of resource adequacy and procurement: (1) ESPs have mainly Liquidated Damages (LD) contracts that are being phased out over 4 years. LD contracts are not unit specific or even plant specific, and not point of delivery-specific, and therefore would require an enormous amount of ex-post analysis by someone other than the LSE to figure out the fuel source and emission characteristics of any delivery; (2) since non-utility LSEs, especially ESPs have limited term contractual obligations with their customers, their procurement horizon is commensurately short-term. In fact, no producer, whether fossil or renewable will sign a long-term contract with such an LSE. Thus, any GHG reductions or monitoring for the small LSEs will be short-term by definition.

DRA is unaware of information at this time, that would permit a meaningful assessment of the implications of excluding the public power entities from conforming with an EPS.

Information requested by DSP of all LSE's might provide the basis for beginning to address the issues associated with this question and sub-questions. As of this date, however, only the IOU's have provided a response to the DSP data request, and that data appears to be limited and highly uneven between PG&E, SCE, and the Sempra utilities in scope and content. At the workshop parties should discuss the data available from each IOU and how to standardize data reporting on an ongoing basis.

QUESTION 3

Over what time frame should the interim EPS be implemented?

a. As a practical matter, how soon could an EPS be implemented?

b. Are any significant procurement decisions now pending or soon anticipated that ought to be covered by a new EPS policy?

c. How long should the interim EPS be kept in place?

DRA believes that it should be possible to establish an interim EPS before the end of 2006. At a minimum, an interim EPS should be implemented until the satisfactory completion of a statewide inventory of GHG emissions from (a) stationary sources in California; and, (b) an acceptable methodology is in place for estimating the GHG emissions associated with imported power.

Until or unless jurisdictional matters associated with public power entities are resolved, however, a "start date" and "duration period" will be impossible to establish over the portions of GHG emissions associated with these (pubic power) LSEs.

The proposed start date for an interim EPS for the jurisdictional LSEs will be possible only if evidentiary hearings are not necessary. The corollary to this caveat, of course, is the assumption the series of workshops envisioned by the CPUC and the CEC are successful in producing sufficient agreement among the parties on the primary elements of the ESP and the GHG inventory.

QUESTION 4

To which power sources should an EPS apply?

The EPS under discussion in this proceeding focuses on incremental procurement actions, particularly to avoid "backsliding" in those investments and procurement decisions by jurisdictional LSEs. This focus raises several questions to be addressed in your pre-workshop comments and in the workshop discussion. Please be as specific as possible as to your proposed design, should the Commission elect to adopt an interim EPS:

a. Should the EPS apply to *all* incremental purchases, contracts and/or units, or to a subset of them? If a subset is appropriate, should it be defined in terms of:

- Size of unit or contract (e.g., MW capacity or MWh supplied)?
- Length of contract?
- Generation type (e.g., baseload versus peaker)?
- Other definition of subset?
- Some combination of the above?

b. The Commission's policy statement suggests applying the EPS only to commitments greater than five years in length; is this the right threshold for "long-term" commitments? Would three years be more appropriate? Does a shorter term just create greater incentives for short-term contracting?

c. Should the standard apply to LSE purchases from Qualifying Facility ("QF') contracts and Distributed Generation ("DG') contracts?

d. Should the standard apply only to LSE contracts and purchases, or to LSE's own new units? Should it apply to repowering existing units?

DRA has not formulated a position on these issues for purposes for these preworkshop comments.

QUESTION 5

What is the standard, and how is it determined?

a. Is the CCGT standard the right standard to use, or is there an alternative standard that would be more appropriate *and* that could be put in place quickly for an interim EPS?

b. If a CCGT standard is used, will it be based on expected performance of a modern CCGT newly placed in service, or a CCGT at the end of its useful life (since performance degrades over time), or an average of emissions from existing CCGTs?

c. How will this standard be measured--based on the emissions from a gas turbine only or from the entire CCGT facility?

d. If peaking facilities are measured against the standard, would the standard be based on the heat rate of the duct firing of a CCGT or the start up of the CCGT? If the latter, what would be the assumed duration of operation?

e. If the EPS is applied only to baseload units or contracts, will the standard be based on the CCGT facility heat rate or will emissions from start ups be considered?

f. What other factors or options should be considered in defining a CCGT (or other) standard?

DRA believes that the current EPS[2] is based on the costs of production (generation, transmission, and distribution to end users) of the "avoidable" central power plants comprised of a mix of natural gas fueled combined cycle (NGCC) and peaker combustion turbine (NGCT) that would be added to the supply mix over the planning period in the absence of demand-side alternatives and renewable central power plant projects necessary to meet the Renewable Portfolio Standard (RPS). In addition, DRA believes that the valuation (costs and benefits) of these demand-side resources and central power plant renewables projects should be based on the "carbon adder" of $8/per metric ton of avoidable GHG emissions that would occur as a result of the addition of the avoided/deferred mix of NGCC and NGCT central power plants.

When assessed in the manner described above, DRA believes that the current EPS can and should be captured primarily in the form of levelized costs of production of each resource addition type (the various demand-side portfolios and the renewable central power plant projects), and will closely resemble the "Market Price Referent" (MPR) that the CPUC and CEC are currently requiring the Investor Owned Utilities (IUOs) to procure (review and select) central power plant projects in the context of their long-term resource procurement plans.

QUESTION 6

Applying the standard to covered resources

a. How should purchased power contracts, especially those from systems outside California, be treated? The Commission has in other contexts identified "contract shuffling" as a potential problem in assigning emission characteristics to power purchased by California LSEs. Can purchases from other power systems be treated on a unit-identified basis, or must system attributes be assigned?

[2] The Commission's October 6, 2005 GHG Policy Statement describes a GHG emissions performance standard that would limit the GHG emissions levels for all new utility-owned and procurement contracts that exceed three years in the length to "no higher that the GHG emissions levels of a combined cycle natural gas turbine.

b. If generation associated with combined heat and power is included in the program, how is the thermal side of the combined heat and power operation accounted for? In implementing the standard, should the Commission adopt an assumed efficiency for the stand alone thermal application, or will case-by-case review be needed?

c. Will the emissions from covered resources be treated on an immediate facility basis, or on a life-cycle basis, compared with life-cycle emissions from a CCGT?

d. Should the EPS apply to each and every resource added to an LSE's power portfolio, or can the LSE average across new resources? That is, would it be appropriate to allow some "fleet averaging" across an LSE's separate (incremental) units or contracts? In considering this issue, discuss how your position would or would not:

    - Be consistent with the treatment of single power-purchase contract that are backed by multiple units;
    - Skew power contracting decisions.

e. If LSEs *are* permitted to average across their new resources, should renewables that meet RPS requirements be included in the average? What effect would this have on the ability of California LSEs to purchase new coal-generated power?

Once a standard is defined, compliance must be calculated by comparing the emissions from covered resources to it. This requires measuring emissions from covered resources, or assigning attributes to them.

One of the most challenging aspects of establishing an EPS---and eventually a load-based cap and trade system---will be associated with establishing a meaningful and complete understanding of the (about 20%) of electricity consumption in California that is imported from out-of state (i.e., the Pacific Northwest and the Desert Southwest). The recently released CEC staff report on this matter---as discussed at the June 7th CEC Transportation Committee Workshop—has revealed the limitations of quality data on this matter. [3] Presumably this document, and the issues raised, will be incorporated into the upcoming CPUC Workshops.

[3] Proposed Methodology to Estimate Generation Resource Mix of California Electricity Imports, Al

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QUESTION 7

Monitoring and enforcement

a. What role should the CCAR play in collecting information on source emissions and monitoring compliance with the EPS Rule?
b. If a GHG performance standard is adopted, how will compliance be measured if procurement decisions are made before mandatory CCAR registration? Based on heat rate and fuel type?
c. What documentation will be required to demonstrate compliance?
d. If combined heat and power QFs and DG are included, what type of documentation of the use of thermal energy is required?
e. If a jurisdictional LSE does not satisfy the EPS with respect to a covered resource, should financial penalties, other remedies or both, be employed?

DRA supports the use of the CCAR as the most likely, centralized, source of a repository of information necessary for monitoring compliance with an adopted EPS.

QUESTION 8

Offsets, Safety Valves, and other flexibility devices

Some participants have requested that any EPS Rule contain flexibility devices, potentially including offsets. There is also some interest in "safety valves" that would relax the program if its impact on power prices was too great, or it was seen to impose system reliability risks. In considering these and other related issues, provide a response to the following:

a. What are the pros and cons of permitting offsets for an interim program of this nature?
b. If you believe that offsets should be permitted, be specific with regard to the nature of allowable offsets and associated implementation steps (including timeline) to put an offset system in place.

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Alvarado, Staff Paper, May, 2006, CEC-700-2006-007.

c. Given the EPS focus on new acquisitions, how can the Commission address the potential undesirable incentive for LSEs to extend the operation of existing, higher-emitting resources? Should LSEs be offered the equivalent of credits against replacement power sources[4] if high-emitting resources are retired during the period of the performance standard? Are there other approaches that the Commission might consider to address this issue?

d. Considering the scope of the EPS rule, and the basic information provided by LSEs about its reach, are safety valves of any kind needed? Is a "reliability override" needed, and if so, how should it be defined and administered?

DRA has not formulated a position on these issues for purposes for these preworkshop comments.

QUESTION 9

How would in interim EPS adopted in this proceeding be coordinated with the utility planning procedures and requirements emerging from the current procurement docket?

DRA has not formulated a position on these issues for purposes for these preworkshop comments.

III. CONCLUSION

DRA looks forward to discussing these issues at the upcoming workshop.

[4] This would be similar to the application of "early reduction credits" in other pollution management regimes.

Respectfully submitted,

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June 12, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document "**PRE-WORKSHOP COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES SUBMITTED IN ADVANCE OF THE JUNE 21-23RD WORKSHOPS ON THE INTERIM PERFORMANCE STANDARD"** in **R.06-04-009**

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Executed in San Francisco, California, on the **12th** day of June, **2006**.

/s/ NELLY SARMIENTO

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